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**September 18, 2008**

**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case:	Personnel Security Hearing
Date of Filing:	March 24, 2008
Case Number:	TSO-0616

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be granted.

**I. Background**

The individual is employed by a Department of Energy (DOE) contractor who has requested that DOE grant the individual an access authorization ("security clearance" or "clearance"). During an evaluation conducted by a DOE consultant-psychologist ("DOE psychologist") in February 2007, DOE came into possession of derogatory information regarding the individual. The DOE psychologist also raised questions regarding her reliability and trustworthiness. In December 2007, the local security office (LSO) conducted a Personnel Security Interview (PSI) with the individual and consequently recommended her case for administrative review.

In February 2008, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding her eligibility for access authorization. Notification Letter (February 12, 2008). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (f), (k), and (l) (Criteria F, K and L).

Criterion F refers to information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 thru 710.30." 10 C.F.R. § 710.8 (f). DOE

invoked this criterion based on information that the individual: (1) signed a Questionnaire for National Security Positions (QNSP) certifying that she had never used illegal drugs but later admitted during a psychological evaluation and a PSI that she had used marijuana four times between May 2004 and November 2005; and (2) admitted that she deliberately omitted illegal drug use on her QNSP and provided discrepant information during her psychological evaluation and her PSI because she was afraid that she would not be granted a security clearance.

Criterion K is invoked when a person has allegedly trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances except as prescribed or administered by a physician or as otherwise authorized by Federal law. 10 C.F.R. § 710.8 (k). DOE invoked Criterion K because the individual admitted smoking marijuana four times between May 2004 and October 2005.

Criterion L is concerned with information in the possession of DOE that indicates that the individual has engaged in unusual conduct and is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy or which furnish reason to believe that she may be subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interests of the national security. 10 C.F.R. § 710.8 (l). With respect to Criterion L, the Notification Letter refers to derogatory information that raises concerns about the individual's honesty, reliability and trustworthiness. Specifically, the individual signed a Security Acknowledgment in January 2007 certifying that she understood that deliberate misrepresentation, omission or falsifications could result in termination of the processing of her clearance application. DOE alleged that despite the certification, the individual deliberately omitted illegal drug use from her QNSP and provided discrepant and misleading information regarding her illegal drug use in her psychological evaluation in February 2007 and in her PSI in December 2007.

In a letter to DOE Personnel Security on March 3, 2008, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the individual, who was not represented by counsel, testified on her own behalf and elected to call six other witnesses. DOE counsel did not call any witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Ind. Ex."

## **II. Analysis**

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to

make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, I find that the individual's access authorization should be granted at this time because I conclude that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

## **A. Findings of Fact**

The individual began working for the contractor part time as a student intern in August 2003 while she was enrolled in high school. Ex. 8 at 3. In May 2004, the individual, then a high school senior, was socializing with a group of friends when one offered her marijuana. Ex. 3 (PSI) at 11-12. She accepted. *Id.* After graduation from high school, the individual enrolled in a local university and used marijuana once in the fall of 2004 under the same circumstances. *Id.* at 12-13. She completed her internship in December 2004. Ex. 7. In the summer and fall of 2005, the individual used marijuana on two additional occasions. *Id.* at 12-14. The individual did not purchase marijuana at any time—she used what was offered by her friends.

The contractor hired the individual as a full time employee in November 2006. Ind. Ex. 1. Her employer requested a clearance and in January 2007, the individual completed a QNSP as part of the clearance application process. In the QNSP, the individual stated that she had never used any illegal drugs. Ex. 5 at 25.

On February 5, 2007, a DOE psychologist interviewed the individual and completed a report based on her evaluation. See Ex. 4 (Report). According to the psychologist, the individual first denied any illegal drug use, but then, at the end of the interview, asked to revisit the question. At that time, according to the psychologist, the individual admitted using marijuana three or four times in 2004. In response to further questioning, the individual stated that she did not enjoy marijuana use, and did not intend to repeat her drug use. The psychologist administered a test to evaluate the individual's emotional stability,

and found no signs of emotional instability. Ex. 4 at 5. However, the psychologist was unable to rule out problems with reliability and judgment, and recommended further investigation to resolve those concerns. Report at 6. The psychologist described the individual's drug use as a brief period of experimentation with marijuana. *Id.* The psychologist also recommended against further expedited processing of the individual's application for a clearance. *Id.*

On February 7, 2007, an Office of Personnel Management (OPM) investigator interviewed the individual. Ex. 7. During the interview, the individual admitted that she had used drugs once. She also said that she used drugs because of peer pressure, and did not intend to use drugs again. *Id.*

As a result of the individual's admission of drug use, DOE requested that the individual participate in a PSI. See Ex. 3. A security specialist interviewed the individual on December 4, 2007. During the PSI, the individual admitted using marijuana three or four times between her graduation from high school in May 2004 and November 2005. PSI at 14. She explained to the interviewer that she was socializing with friends who offered her marijuana. She did not purchase any drugs. She stated that she has not used drugs since then, and did not intend to use them again. *Id.* at 17. The individual told the interviewer that she "overlooked" her "experimentation" with marijuana and did not disclose her use on her QNSP. PSI at 21-22. The individual also stated that she knew drug use was illegal. PSI at 19. She did not deliberately try to hide her drug use, but was admittedly worried that she would not get a clearance. PSI at 25. She no longer socializes with the friends who provided the marijuana. PSI at 16.

## **B. DOE's Security Concerns**

The LSO invoked Criterion F because the individual did not disclose her use of illegal drugs on the QNSP that she completed during the application process. Further, the individual admitted providing "discrepant and misleading information" during her psychological evaluation and her OPM interview. See Ex. 1(Notification Letter) at 4. There are substantial security concerns when an individual is not forthcoming with security personnel. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." See Attachment to Memorandum from Assistant to the President for National Security Affairs, "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information," at ¶15 (December 29, 2005) (Revised Adjudicative Guidelines). The individual admits that she did not disclose her drug use on the QNSP, and also admits that she provided discrepant information during her psychological and OPM interviews. Thus, I find that the security concern is warranted.

Criterion K deals with the use of illegal drugs. Illegal drug use may cause an individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. See Revised Adjudicative Guidelines at 11. Also, illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. See, e.g., *Personnel Security Hearing*,

Case No. VSO-0448, 28 DOE ¶ 82,816 (2001); *Personnel Security Hearing*, Case No. VSO-0350, 28 DOE ¶ 82,756 (2000). The individual's drug use is well documented in the record, and validates the charges under Criterion K.

As for Criterion L, the LSO alleges that the individual misrepresented her marijuana use, even though she knew that such a misrepresentation could result in the termination of her security clearance application. The individual was not reliable or trustworthy when she furnished discrepant information and did not fully disclose her drug use during the processing of her application. The individual's behavior demonstrates an unwillingness to comply with rules and regulations which indicates that she may not properly safeguard protected information. See Revised Adjudicative Guidelines at 8. Thus, the security concern under Criterion L is also valid.

## **C. Hearing Testimony**

### **1. The Individual**

At the hearing, the individual explained why she did not disclose her marijuana use on her QNSP. She testified that when she read the question about drug usage on the QNSP, her initial reaction was that she was not a drug user, but rather that she had experimented with drugs. Tr. at 74. The individual testified about the circumstances surrounding her marijuana use. She was socializing with friends and had never tried marijuana before, but then succumbed to peer pressure and decided to try it. *Id.* at 80. She stated that she did not enjoy smoking marijuana, but admitted that she had smoked three additional times, while socializing with the same people on each occasion. *Id.* at 81. She no longer associates with the people who gave her the marijuana. *Id.* at 81. She no longer spends time with those people. *Id.* However, she has learned from her mistakes and now passes most of her time with her family and close friends. *Id.* at 82.

### **2. Other Witnesses**

The individual offered the testimony of her parents, her sister, a friend, her cousin, and a former manager. The cousin testified that lying was out of character for the individual, who he described as honest and trustworthy. Tr. at 13. He stated that she spends most of her free time with her family and that she has also expressed remorse over the answer that she put on her QNSP. *Id.* at 17. The individual's sister stated that she was not aware that the individual had used drugs because she did not know the individual to be a drug user. She stated that the individual thought that the use was insignificant and thus did not disclose the use on her QNSP. The individual did not ask her advice on completing the questionnaire. The individual as expressed remorse. *Id.* at 23. She stated that the individual usually spends her time with her sisters and does not have many friends. *Id.* at 29. She testified that they both lived at home at the time that the individual had tried marijuana. *Id.* at 25-29.

The individual's parents testified that they considered her to be a responsible person. Tr. at 41, 64. They were surprised to learn that she had tried marijuana. *Id.* at 43, 66. They considered her experimentation to be a result of peer pressure. *Id.* at 43. The individual's

father, who holds a clearance, testified that the individual did not ask him to help her with the application. *Id.* at 67. The individual has matured. *Id.* at 50. According to her mother, the individual made a distinction between her experimentation and actual drug use. *Id.* at 69. She stated that her daughter takes responsibility for her actions. *Id.* The individual's father noted that his individual has matured in the years since her experimentation. *Id.* at 47.

A friend of the individual testified that she has known the individual approximately 12 years and that she considers the individual to be trustworthy. Tr. at 52-54. She has never seen the individual try marijuana. *Id.* at 55. She testified that she and the individual did not socialize with many people and spent most of their time with other members of their church. *Id.* at 59. She sees the individual on weekends, and would know if she were using marijuana. The individual's former supervisor testified that she had supervised the individual between April 2005 and April 2007. *Id.* at 32. She considered the individual to be very intelligent, mature and trustworthy, and never saw evidence of drug use. *Id.* at 32-39.

## **D. Mitigation of Security Concerns**

### **1. Criterion F – Falsification**

The concern in Criterion F has two bases set forth in the Notification Letter: (1) the individual's admission of drug use after certifying that she had never used drugs; and (2) the individual's alleged deliberate omission of drug use on the QNSP so that her usage would not be discovered, and providing discrepant information because she was afraid that she would not be granted a clearance.

Hearing Officers have considered several factors in cases involving falsification including whether the individual came forward voluntarily to renounce her falsifications, *compare Personnel Security Hearing*, Case No. VSO-0037, 25 DOE ¶ 82,778, (OSA, 1996) (voluntary disclosure by the individual) *with Personnel Security Hearing*, Case No. VSO-0327, 28 DOE ¶ 83,005 (2000), *affirmed* (OSA, 2000) (falsification discovered by DOE security); and whether a pattern of falsification is evident, *see Personnel Security Hearing*, Case No. TSO-0394, 29 DOE ¶ 82,984 (2006) (finding that pattern of falsification precludes mitigation of Criterion F concern).

As concerns the individual's admission of drug use after certifying on her QNSP that she had not used drugs, I find that the individual has mitigated the security concerns in the Notification Letter. First, she explained in her response to the Notification Letter that she interpreted the question on the QNSP to mean regular drug usage. I find this explanation credible, because when the individual actually spoke to the psychologist during the interview and to the investigator during the OPM interview, she self-reported her drug use. Thus, after having an opportunity to contemplate the psychologist's inquiry concerning drug use, she realized that she had misinterpreted the QNSP and immediately rectified her mistake. Once the individual understood what was asked of her, she self-reported her drug use to the DOE psychologist and OPM investigator, and corrected the omission in her QNSP. See Guideline E, ¶ 17 (a). This self-report of her drug use removed any doubts

about the individual's honesty. *Id.* See also *Personnel Security Hearing*, Case No. TSO-0625, 29 DOE ¶ \_\_\_\_\_ (September 10, 2008); *Personnel Security Hearing*, Case No. VSO-0441, 28 DOE ¶ 82,825 (2001) (finding that voluntary disclosure of drug use mitigated Criterion F security concern). Second, although the individual reported different dates for her marijuana usage, she credibly explained that she was not sure of the exact dates of her usage. She stated that "[t]he only reason that the dates of my experimenting with marijuana were different is because I honestly cannot remember the exact dates." See Ex. 2 at 3. During her hearing testimony, I observed that the individual was not sure of some important dates, but she answered all questions directly and I found no deception in her answers or behavior.

The second part of the Criterion F concern is based on the allegation that the individual deliberately omitted any mention of her illegal drug use and then provided discrepant information. I find that the individual has mitigated this concern for the following reasons. First, the individual stated in her December 2007 PSI that the omission was not deliberate, but was a result of her misinterpretation of the QNSP question relating to drug use. When asked if she was deliberately trying to hide information from DOE, the individual replied:

Well, it's really hard to pinpoint each time that, that I, that I've used it. So I wasn't deliberately trying to hide it. Um, I should have said, you know, more than once, but I don't feel like I was deliberately trying to, to be deceptive.

PSI at 25.

Again in March 2008, the individual responded to the LSO's allegation that she deliberately omitted her illegal drug use as follows:

I do not believe that I admitted deliberately omitting the few times I tried marijuana in hopes it would not be discovered. Again, I did not fully understand the question of usage. During the PSI I did admit answering the question no since that is the way I understood the question of usage and yes I am sure I hoped the times I tried marijuana would not be a topic of discussion. After realizing the difference in the question and knowing that the information required was if I ever tried marijuana, I was certainly worried about being granted my clearance. I believe what I was attempting to articulate was just that; I was not concerned about being granted access because of my misunderstanding of the original question. I was so confused by this point I do not believe I was able to be clear in my thought process.

Ex. 2 at 3.

Thus, the individual explained that she was worried about being granted a clearance only *after* she realized that she had put the wrong answer on her QNSP. In addition, the individual also testified at the hearing that she was not trying to hide anything from DOE. Tr. at 75. She expressed remorse that she did not ask for guidance in completing the QNSP from one of several family members who holds a clearance. *Id.* at 77. Thus, there

are three items in the record (PSI testimony, hearing testimony, and response to Notification Letter) that support a finding that the individual did not deliberately try to hide information in order to get a security clearance.

In summary, I conclude that evidence in the record mitigates the security concerns surrounding the individual's drug use and alleged omissions, discrepant information, and falsifications cited in the Notification Letter. Given the facts of this case and the guidance established by our previous cases, I cannot ascribe a deliberate intent to falsify and mislead to an individual who voluntarily and in a timely manner disclosed her experimentation with illegal drugs, and who does not display a pattern of falsification. *See Personnel Security Hearing*, Case No. VSO-0441, 28 DOE ¶ 82,825 (2001). Therefore, I conclude that the individual has mitigated the security concerns under Criterion F.

## **2. Criterion K – Drug Use**

In a Part 710 proceeding, the Hearing Officer gives deference to the expert opinions of mental health professionals regarding rehabilitation or reformation from the use of illegal substances. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In the instant case, a DOE psychologist evaluated the individual but did not make a diagnosis of substance abuse or dependence. The psychologist concluded that the individual had engaged in a brief period of experimentation during her days as a student.

According to the regulations, I must rely on the record and my observations at the hearing, and make a common-sense judgment on this matter as directed by 10 C.F.R. § 710.7(c). After carefully reviewing the record and the Revised Adjudicative Guidelines, I find that the individual has mitigated the security concerns regarding her use of marijuana for the following reasons. First, her usage of drugs was isolated and minimal. She used a small quantity of marijuana on four occasions over the 18 months after high school graduation. She has not used illegal drugs in over two years since that time. Second, the individual has demonstrated her intent not to use drugs in the future. *See* Guideline H, ¶ 26 (b). The individual's witnesses and the individual credibly testified that she has abstained from the use of illegal substances since her last use in fall 2005, over two years prior to the hearing. *See Personnel Security Hearing*, Case No. TSO-0625, 29 DOE ¶ \_\_\_\_ (September 10, 2008) (finding that 15 months of abstinence lends credence to testimony of individual that she does not intend to use drugs in future). She has also disassociated herself from friends and acquaintances that use drugs. There is no evidence in the record that she has continued to use marijuana.

In summary, the individual has convinced me through her testimony and that of her witnesses that there is little likelihood that she will use illegal drugs again. Her marijuana use was isolated and minimal. The minimal usage appears to have been the result of peer pressure. That concern is resolved based on witness testimony that supports her assertion that she no longer keeps the same company and that she has matured to the point where peer pressure is no longer a factor. For the reasons set forth above, I conclude that the individual has mitigated the Criterion K security concerns in the Notification Letter. *See* Revised Adjudicative Guidelines at 12.



### 3. Criterion L- Unusual Conduct

To mitigate the Criterion L concerns based on the discrepant information and deliberate omission on her QNSP, the individual presented the testimony of witnesses, all of whom described the individual as honest, reliable and trustworthy. The individual also gave a credible explanation of why she did not disclose her experimentation with drugs on the QNSP. In her response to the Notification Letter, she stated that her immediate interpretation of usage did not include experimentation with marijuana, or trying it a few times. Ex. 2 at 2. She explained that during the psychological evaluation and the OPM interview in February 2007, the interviewers posed the question about drug use in a different manner than it was presented in the QNSP. *Id.* When listening to the interviewers, she understood the question to ask if she had used drugs “at all” or “ever.” *Id.* As a result, at that point she acknowledged her marijuana use. *Id.*

The individual was also credible in explaining that she did not remember all of the exact dates that she had used marijuana. As a result, there were discrepancies in the dates she offered during her PSI and her psychological evaluation. Second, the individual acknowledged the behavior that was at the root of the discrepancies--her experimentation with marijuana--and then took steps to alleviate the circumstances that caused the behavior by disassociating herself from the acquaintances that had provided her with the drug. Third, she is not subject to exploitation, manipulation or duress. Most of the individual's witnesses were family members, and all now know about her previous experimentation with drugs. Based on the credible testimony that she now spends most of her time with family members and a few close friends, she appears to have nothing to hide from those that know her. See *also* Tr. at 16-17. Thus, I find that she has provided sufficient mitigation of the security concern such that it does not cast doubt on her reliability, liability, trustworthiness, or good judgment. See Guideline E, Section 17 (c); PSI at 34. Peer pressure is no longer an issue because she has matured, as demonstrated by her testimony, her demeanor, and the testimony of her witnesses.

It is true that the individual did not disclose drug use on her QNSP in January 2007. However, after listening to the question as it was posed by the psychologist, at the end of the interview, the individual asked the psychologist to revisit the subject and then admitted that she had used marijuana four times. Thus, because there is no evidence in the record that DOE obtained this information from any other source, I find that the individual mitigated the security concerns about her honesty or reliability when she made a good-faith effort to correct the omission and admitted her marijuana use to the psychologist. <sup>1</sup> See Guideline E, ¶ 17 (a). See *also Personnel Security Hearing*, Case No. TSO-0625, 29 DOE ¶ \_\_\_\_\_ (September 10, 2008) (finding that individual who admitted drug usage that DOE would not

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<sup>1</sup> According to the OPM Report of Investigation, OPM conducted its investigation of the individual between February 5 and February 27, 2007. Ex. 7. The DOE psychologist interviewed the individual on February 5, 2007. Ex. 4. On that day the individual admitted her drug use to the DOE psychologist. The OPM investigator interviewed the individual two days later, on February 7, 2007. Ex. 7.

have known otherwise has mitigated Criterion L concern regarding honesty). Therefore, I conclude that the individual has mitigated the Criterion L concerns.

## **II. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (f), (k), and (l). However, the individual has presented adequate mitigating factors for all criteria that alleviate the legitimate security concerns of DOE security as regards that criterion. Thus, in view of the criteria and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: September 18, 2008